

### § 31.9

### 17 CFR Ch. I (4-1-10 Edition)

shall include only those warehouse receipts which are unencumbered or against which the balance of the principal and accrued interest on cash loans for which such receipts serve as collateral does not exceed 70 percent of the current market value of the commodities underlying such receipts.

(d) A leverage transaction merchant who uses as collateral for cash loans warehouse receipts held as cover for leverage contracts shall maintain a separate record for such loans which contains the following information:

- (1) The date on which the loan was made;
- (2) The name of the commercial bank or futures commission merchant making such loan;
- (3) The purpose for which the loan was made;
- (4) The amount of the loan;
- (5) The interest rate on the loan;
- (6) The loan's maturity date;
- (7) The date of any partial or complete liquidation of the loan; and
- (8) A description of the warehouse receipt collateralizing such loan including the receipt number, the issuer's name, and the total quantity of the commodity covered by the warehouse receipt. Such loans shall be evidenced in a written agreement executed by the leverage transaction merchant and the lender. The leverage transaction merchant shall retain such agreement and any related notes in accordance with the requirements of § 31.14 of this part.

(e) The requirements of paragraphs (a) through (d) of this section shall not be applicable if the leverage transaction merchant is a member of a designated self-regulatory organization and conforms to minimum cover standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to section 19 of the Act and § 31.28 of this part.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5531, Feb. 13, 1984, as amended at 50 FR 28, Jan. 2, 1985; 54 FR 41079, Oct. 5, 1989]

### § 31.9 Minimum financial requirements.

(a) Each leverage transaction merchant must at all times maintain adjusted net capital equal to or in excess of \$2,500,000, plus 20 percent of the market value of the amount of physical commodities subject to leverage contracts entered into by the leverage transaction merchant which are uncovered, plus 2½ percent of the market value of the amount of physical commodities subject to short leverage contracts entered into by the leverage transaction merchant which are covered.

(1) For purposes of determining compliance with the provisions of paragraph (a) of this section, each leverage transaction merchant must compute the market value of the physical commodities subject to leverage contracts which it has entered into by using the widely accepted and broadly disseminated commercial or retail cash price series submitted with the leverage transaction merchant's application for registration of the leverage commodity in accordance with § 31.6, and cannot include any mark-ups or discounts of the leverage transaction merchant.

(2) The requirements of paragraph (a) of this section shall not be applicable if the applicant or registrant is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to section 19 of the Act and § 31.28 of this part.

(3) No person applying for registration as a leverage transaction merchant shall be so registered unless such person affirmatively demonstrates to the satisfaction of the Commission that it complies with the financial requirements of this section. Each leverage transaction merchant must be in compliance with this section at all times and must be able to demonstrate such compliance to the satisfaction of the Commission and/or the designated self-regulatory organization.

(4) A leverage transaction merchant who is not in compliance with this section, or is unable to demonstrate such

compliance as required by paragraph (a)(3) of this section, must immediately cease engaging in the business of offering to enter into, entering into, or confirming the execution of, any leverage contract until such time as the leverage transaction merchant is able to demonstrate such compliance. Nothing in this paragraph shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a leverage transaction merchant for non-compliance with any of the provisions of this section. Any leverage transaction merchant required immediately to cease doing business under this paragraph shall remain liable on all leverage contracts previously entered into until all rights of and obligations owing to the customers thereunder have been fulfilled.

(b) For the purposes of this section:

(1) Where the applicant or registrant has an asset or liability which is defined in Securities Exchange Act rule 15c3-1 (§240.15c3-1 of this title), the inclusion or exclusion of all or part of such asset or liability for the computation of adjusted net capital shall be in accordance with §240.15c3-1 of this title, unless specifically stated otherwise in this section;

(2)(i) The term "customer" means customer as defined in §31.4(d);

(ii) The term "proprietary account" means a commodity futures, option or leverage account carried on the books of the applicant or registrant itself, or for general partners of the applicant or registrant; and

(iii) The term "noncustomer account" means a leverage account carried on the books of the applicant or registrant for a person which is not included in the definition of customer (as defined in paragraph (b)(2)(i) of this section) or proprietary account (as defined in paragraph (b)(2)(ii) of this section);

(3) The term "Business day" means any day other than a Saturday, Sunday or legal holiday;

(4) The term "net capital" has the same meaning as in §1.17 of this chapter: *Provided, however,* That the term "leverage transaction merchant" shall be substituted for the term "futures commission merchant" in §1.17 of this

chapter. In determining net capital, the provisions set forth in §1.17(c)(1) of this chapter shall apply;

(5) The term "current assets" has the same meaning as in §1.17(c)(2) of this chapter: *Provided,* That the provisions of §1.17(c)(2)(i) of this chapter shall apply to leverage contract accounts as well as commodity futures and option accounts;

(6) The provisions set forth in §1.17(c)(3) of this chapter shall apply;

(7) The term "liabilities" has the same meaning as in §1.17(c)(4) of this chapter;

(8) In computing adjusted net capital, the safety factors set forth in §1.17(c)(5) of this chapter shall apply: *Provided, however,* That the safety factors set forth in §1.17(c)(5)(ii) (B) and (C) of this chapter shall not apply to inventory, to the extent such inventory represents cover for leverage contracts entered into by a leverage transaction merchant; *And, provided further,* That the safety factors set forth in §1.17(c)(5) (x) and (xii) of this chapter shall not apply to any futures contracts or commodity options traded on contract markets held in proprietary accounts which represent cover for leverage contracts entered into by a leverage transaction merchant;

(9) The safety factors set forth in §1.17(c)(5) (viii) and (ix) of this chapter for undermargined commodity futures and commodity option customer and noncustomer accounts shall apply in a like manner to undermargined leverage customer and noncustomer accounts, respectively, and the term "leverage transaction merchant" shall be substituted for the terms "applicable boards of trade" or "clearing organization"; and

(10) The provisions set forth in §1.17 (d), (e), (f), (h) and (j) of this chapter shall apply.

(c) No person shall be registered as a leverage transaction merchant unless, commencing on the date the person applies for such registration, the person prepares, and keeps current, ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each

### §31.10

### 17 CFR Ch. I (4-1-10 Edition)

transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on Form 2-FR or categories that are in accord with generally accepted accounting principles. Each person so registered shall prepare and keep current such records.

(d) Each registered leverage transaction merchant, and each person who has applied for registration as a leverage transaction merchant, must make and keep as a record in accordance with §31.14 of this part formal computations of its adjusted net capital and of its minimum financial requirements pursuant to this section as of the close of business each month. Such computations must be completed and made available for inspection by any representative of the National Futures Association, in the case of an applicant, or of the Commission, the designated self-regulatory organization, if any, or the United States Department of Justice in the case of a registrant, within 30 days after the date for which the computations are made, commencing the first month-end after the date the application for registration is filed.

[49 FR 5531, Feb. 13, 1984; 49 FR 25427, June 21, 1984, as amended at 50 FR 36414, Sept. 6, 1985; 54 FR 41079, Oct. 5, 1989]

#### **§31.10 Repurchase and resale of leverage contracts by leverage transaction merchants.**

(a) No leverage transaction merchant shall offer to sell or sell a long leverage contract involving a leverage commodity to any leverage customer at any time when such leverage transaction merchant is not offering to repurchase from any of its leverage customers any long leverage contract, and is not offering to resell to any of its leverage customers any short leverage contract, involving the same leverage commodity previously sold or purchased by the leverage transaction merchant to or from a leverage customer.

(b) No leverage transaction merchant shall offer to purchase or purchase a

short leverage contract involving a leverage commodity from any leverage customer at any time when such leverage transaction merchant is not offering to resell to any of its leverage customers any short leverage contract, and is not offering to repurchase from any of its leverage customers any long leverage contract, involving the same leverage commodity previously purchased or sold by the leverage transaction merchant from or to a leverage customer.

[50 FR 36414, Sept. 6, 1985]

#### **§31.11 Disclosure.**

(a) Except as provided in paragraph (i) of this section, prior to the opening of a leverage customer account, a leverage transaction merchant soliciting an order for any leverage contract shall furnish to the prospective leverage customer a dated Disclosure Document and receive from such prospective leverage customer a signed and dated copy of the risk disclosure statement contained in such document which acknowledges that the customer received and understood the Disclosure Document. The Disclosure Document shall contain then current information with respect to the leverage contract being offered by the person soliciting the order therefor, and shall contain:

(1) The following bold-faced risk disclosure statement in at least ten-point type on the first page of the Disclosure Document:

BECAUSE OF THE UNPREDICTABLE NATURE OF THE PRICES OF PRECIOUS AND OTHER METALS, LEVERAGE CONTRACTS INVOLVE A HIGH DEGREE OF RISK AND ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. THE LEVERAGE CUSTOMER SHOULD BE AWARE THAT THE VALUE OF A LEVERAGE CONTRACT ORIGINALLY PURCHASED BY A CUSTOMER ("LONG LEVERAGE CONTRACT") MUST EXCEED THE BREAK-EVEN PRICE BEFORE IT IS POSSIBLE TO REALIZE A PROFIT ON THE CONTRACT. SIMILARLY, THE VALUE OF A LEVERAGE CONTRACT ORIGINALLY SOLD BY A LEVERAGE CUSTOMER ("SHORT LEVERAGE CONTRACT") MUST BE LESS THAN THE BREAK-EVEN PRICE BEFORE IT IS POSSIBLE TO REALIZE A PROFIT ON THE CONTRACT. A FILLED IN VERSION OF THE CUSTOMER CONFIRMATION STATEMENT REFLECTING A SINGLE TRANSACTION IN A REPRESENTATIVE LEVERAGE COMMODITY